

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GRACE L. SANDOVAL,

Plaintiff,

vs.  
BENJAMIN BARNHART,

Defendant.

CASE NO. 09cv269 WQH (POR)

**ORDER**

HAYES, Judge:

The matters before the Court are the Motion for Leave to Proceed In Forma Pauperis (Doc. # 2) and the Motion to Appoint Counsel (Doc. # 3).

**Background**

On February 12, 2009, Plaintiff Grace L. Sandoval, a nonprisoner proceeding pro se, initiated this action by filing the Complaint (Doc. # 1). On February 12, 2009, Plaintiff also filed the Motion for Leave to Proceed In Forma Pauperis (“Motion to Proceed IFP”) and the Motion to Appoint Counsel.

**Analysis**

**I. Motion to Proceed In Forma Pauperis**

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* U.S.C. § 1914(a). An action may proceed despite a plaintiff’s failure to prepay the entire fee only if the plaintiff is granted leave to proceed in forma pauperis pursuant to U.S.C.

1       § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

2           In her affidavit accompanying the Motion to Proceed IFP, Plaintiff states that she is not  
 3 employed, receives no income, has a checking account with a present balance of \$300.00,  
 4 owns a 2002 Honda Civic for which she owes \$377.00, and does not have any other significant  
 5 assets such as real estate, stocks, bonds or securities. The Court has reviewed Plaintiff's  
 6 affidavit of assets and finds it is sufficient to show that she is unable to pay the fees or post  
 7 securities required to maintain this action. The Court grants the Motion to Proceed IFP  
 8 pursuant to 28 U.S.C. section 1915(a).

## 9       **II. Initial Screening Pursuant to 28 U.S.C. Section 1915(e)(2)(b)**

10          After granting IFP status, the Court must dismiss the case if the case "fails to state a  
 11 claim on which relief may be granted" or is "frivolous." 28 U.S.C. § 1915(e)(2)(B). A review  
 12 of the Complaint shows that the Complaint fails to state a cognizable claim. The Court further  
 13 finds that the Complaint is frivolous.

14          The standard used to evaluate a motion to dismiss is a liberal one, particularly when the  
 15 action has been filed pro se. *Estelle v. Gamble*, 429 U.S. 97, 97 (1976). However, even a  
 16 "liberal interpretation . . . may not supply elements of the claim that were not initially pled."  
 17 *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). The  
 18 Complaint does not allege any legal basis under which Plaintiff is entitled to relief. To the  
 19 extent Plaintiff is alleging a 42 U.S.C. section 1983 civil rights action, she fails to allege a state  
 20 actor violated her federal constitutional rights, as required to state a claim under section 1983.  
 21 *See* 42 U.S.C. § 1983. The allegations in the Complaint are insufficient to put Defendant on  
 22 notice of the claims against him, as required by Rule 8 of the Federal Rules of Civil Procedure.  
 23 After reviewing the Complaint, the Court finds that Plaintiff fails to state a claim on which  
 24 relief can be granted.

25          A complaint "is frivolous where it lacks an arguable basis either in law or fact. [The]  
 26 term 'frivolous,' when applied to the complaint, embraces not only the inarguable legal  
 27 conclusion, but also the fanciful factual allegation." *Neitzke v. Williams*, 490 U.S. 319, 325  
 28 (1989); *see also Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996); *Cato v. United States*, 70

1 F.3d 1103, 1106 (9th Cir. 1995); *Lopez v. Dept. of Health Servs.*, 939 F.2d 881, 882 (9th Cir.  
 2 1991). When determining whether a complaint is frivolous, the court need not accept the  
 3 factual allegations as true, but must “pierce the veil of the complaint,” to determine if the  
 4 allegations are “fanciful,” “fantastic,” or “delusional.” *Denton v. Hernandez*, 504 U.S. 25, 33  
 5 (quoting *Neitzke*, 490 U.S. at 327-28). In this case, Plaintiff makes delusional claims against  
 6 various individuals and entities. For example, Plaintiff alleges that “Benjamin Barnhart is  
 7 invaded by the blue hard hat masacres [sic] in his home in San Marcos, CA.” *Complaint*, p.  
 8 4. Plaintiff alleges: “The drug addicts spray our brand new clothes to cause our brand new  
 9 clothes to fade and damages. The drug addicts force a harmful substance in our liquid  
 10 detergent and powder detergent to cause our clothes to fade and damage. The drug addicts  
 11 have caused damages to everything that my two daughters and I have purchased and paid for  
 12 in San Diego County, California.” *Id.*, at 15. The Court finds that there is no logical  
 13 construction of the Complaint from which to derive a viable claim against the named  
 14 Defendant. Plaintiff’s allegations are fanciful and delusional and “it is absolutely clear that  
 15 the deficiencies of the complaint could not be cured by amendment.” *Franklin v. Murphy*, 745  
 16 F.2d 1221, 1228 n.9 (9th Cir. 1984). Accordingly, the Court dismisses the Complaint as  
 17 frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

### 18 III. Appointment of Counsel

19 In light of the Court’s sua sponte dismissal of this action, Plaintiff’s request for  
 20 appointment out counsel is denied as moot.

### 21 CONCLUSION

22 IT IS HEREBY ORDERED that the Motion for Leave to Proceed In Formal Pauperis  
 23 (Doc. # 2) is **GRANTED**. The Court **DISMISSES** the case without prejudice, and **DENIES**  
 24 the Motion to Appoint Counsel (Doc. # 3) as moot.

25 DATED: March 18, 2009

26   
 27 WILLIAM Q. HAYES  
 28 United States District Judge